REMARKS

This Response is submitted in reply to the final Office Action mailed on January 24, 2008. The Commissioner is hereby authorized to charge any fees which may be required or credit any overpayment to Deposit Account No. 02-1818. If such a withdrawal is made, please indicate the Attorney Docket No. 115808-504 on the account statement.

Claims 1-14 are pending. Claim 2 was previously canceled. Claims 1 and 3-14 are rejected under 35 U.S.C. §103. For the reasons set forth below, Applicants respectfully request that the rejections be withdrawn.

In the Office Action, Claims 1 and 3-14 are rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 4,888,171 to Okonogi et al. ("*Okonogi*") in view of EP 0298605 to Klapwijk et al. ("*Klapwijk*") and WO 99/48372 to Van Lengerich ("*Van Lengerich*"). Independent Claim 1 recites, in relevant part, a pellet comprising a compacted inner matrix with a water activity below 0.3. Independent Claim 11 recites, in relevant part, a process for obtaining a pellet comprising drying a mixture to an Aw (water activity) below 0.3 and compacting the mixture under pressure to obtain pellets. Applicants respectfully submit that the combination of cited references fail to disclose every element of the present claims. Moreover, Applicants submit that the cited references are not properly combinable.

Okonogi fails to disclose or suggest a compacted pellet (non-coated) or compacted inner matrix (non-coated) of a pellet that has a water activity below 0.3 as required, in part, by the present claims. The Office Action admits this deficiency. See, Office Action, page 4, line 10. Applicants also submit that secondary references *Klapwijk* and *Van Lengerich* fail to remedy the deficiencies in *Okonogi*.

Regarding *Klapwijk*, the Office Action asserts that *Klapwijk* discloses the process of making supported lactic acid bacterial compositions where the water activity of the supported flora products is 0.3 or less, particularly 0.2 or less. The Office Action also asserts that *Klapwijk* discloses that improved storage life is provided with water activity values 0.15 or less. Applicants submit that these statements in *Klapwijk* do not remedy the deficiencies in *Okonogi*.

Klapwijk is directed to the preparation of bacterial compositions used in bread making. See, *Klapwijk*, page 1, lines 1-3. The examples disclosed in *Klapwijk* clearly teach only processes for preparing cell concentrate mixtures or processes for incorporating these mixtures

into bread dough. See, *Klapwijk,* Examples 1-7. As a result, *Klapwijk* fails to disclose any compacted pellet (non-coated) or compacted inner matrix (non-coated) of a pellet that has a water activity below 0.3 as required by the present claims.

The Office Action asserts, however, that *Klapwijk* is not limited to breadmaking. See, Office Action, page 7, line 7. Regardless, *Klapwijk* provides no indication that its compositions are capable of being compacted. Applicants note that the present claims recite a compacted pellet or compacted inner matrix of a pellet with a water activity less that 0.3. By contrast, *Klapwijk* only recites an improved lactobacillus flora composition. Even if this composition has a water activity 0.3 or less, it still is not a compacted composition, let alone a compacted pellet. Moreover, if the composition of *Klapwijk* is a component of a larger compacted composition, the water activity of the lactobacillus flora composition of *Klapwijk* does not determine the compacted composition's overall water activity. Therefore, *Klapwijk* fails to disclose or suggest a compacted pellet (non-coated) or compacted inner matrix (non-coated) of a pellet that has a water activity below 0.3 as required, in part, by the present claims.

Finally, *Van Lengerich* also fails to remedy the above deficiency of *Okonogi*. *Van Lengerich*, like *Okonogi*, is silent as to any water activity information regarding its product. In fact, the Office Action does not rely on *Van Lengerich* to arguably disclose the less that 0.3 water activity of the present claims. Moreover, since *Van Lengerich* requires a free-flowing mixture where its starch component is not gelatinized, any water existing in the product is more likely to be free than bound, which would cause a higher water activity than that of the present claims. See, *Van Lengerich*, page 5, line 20 to page 6, line 6.

The Office Action asserts, however, that the core has 5.9% moisture and that the free flowing matrix of *Van Lengerich* not containing gelatinized starch does not mean that the water activity is high. See, Office Action, page 7, lines 11-13. Applicants respectfully disagree.

First, the 5.9% moisture level of the core is no indicator of the water activity of the free-flowing matrix. Based on whatever ingredients and physical characteristics compose the free-flowing matrix, the moisture in the core could be bound, free, or a combination of both. As a result, moisture levels are clearly independent of water activity levels, rather than indicative of water activity. Therefore, the Office Action inaccurately asserts that the moisture level and non-gelatinized starch does not mean the water activity is high. Rather, these characteristics

generally indicate a high water activity. More importantly, moisture levels and non-gelatinized starch do not disclose or suggest a low water activity below 0.3 as required by the present claims.

Second, *Van Lengerich* states, "baking is generally performed above the gelatinization temperature of starch, but the starch is not substantially gelatinized because sufficient amounts of water are not accessible to the starch at elevated temperatures" (emphasis added). See, *Van Lengerich*, page 6, lines 19-24. Therefore, even *Van Lengerich* discloses the non-accessibility of water in its composition. By being un-bound, this non-accessible water, or free water, raises water activity.

Further, Applicants respectfully submit that the cited references are not properly combinable because the references are directed to completely different inventions. On one hand, *Okonogi* is directed to pelletized compositions. See, *Okonogi*, column 3, lines 9-23. By contrast, *Klapwijk* and *Van Lengerich* are not directed to pelletized compositions.

Klapwijk, as stated above, is directed to preparing bacterial compositions used in bread making. See, *Klapwijk,* page 1, lines 1-3. The examples disclosed in *Klapwijk* clearly teach only processes for preparing cell concentrate mixtures or processes for incorporating these mixtures into bread dough. See, *Klapwijk,* Examples 1-7. Though the Office Action asserts that *Klapwijk* is not limited to breadmaking, *Klapwijk* provides no indication that its compositions are capable of being compacted into pellets.

Van Lengerich is directed to preparing encapsulated compositions rather than pelletized compositions. See, *Van Lengerich*, Abstract. In fact, *Van Lengerich* teaches away from pelletized compositions. Specifically, *Van Lengerich* teaches that products encapsulated by conventional processes cause sever problems when chewed because they are not chewable and exhibit a texture similar to that of uncooked rice or pasta. They can be used as dense pellets for a variety of processing applications, where a controlled release of the heat sensitive encapsulant is desired. However, chewing or masticating of these products would be very unpleasant and their incorporation into other food products is not practical. By contrast to products encapsulated by conventional processes, the invention in *Van Lengerich* provides an edible product that is chewable, has a pleasant taste and texture and contains encapsulated components, particularly nutraceutical, pharmaceutical or biologically active components. See, *Van Lengerich*, page 2,

lines 12-23. Therefore, besides being directed to encapsulated compositions rather than pellets, *Van Lengerich* teaches away from pellets.

Therefore, Applicants respectfully submit that the combination of cited art fails to disclose or suggest every element of the present claims. Moreover, Applicants submit that the cited references are not properly combinable.

Accordingly, Applicants respectfully request that the obviousness rejection in view of *Okonogi*, *Klapwijk* and *Van Lengerich* be withdrawn.

For the foregoing reasons, Applications respectfully request reconsideration of the above-identified patent application and earnestly solicit an early allowance of same.

Respectfully submitted,

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